

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

KOHL'S DEPARTMENT STORES, INC., Petitioner, vs. STATE OF IOWA PROPERTY ASSESSMENT APPEAL BOARD, Respondent, and POTTAWATTAMIE COUNTY BOARD OF REVIEW Intervenor.	Case No. CVCV101102 RULING AND ORDER
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This matter came before the Court on Petitioner's Petition for Judicial Review. Petitioner, Kohl's Department Store, Inc., was represented by counsel of record, Douglas R. Schlaeger. Respondent, State of Iowa Property Assessment Appeal Board, was represented by counsel of record, Jessica Braunschweig-Norris and Curtis Swain. Intervenor, Pottawattamie County Board of Review, was represented by Assistant Pottawattamie County Attorney, Leanne Gifford. Hearing was held on May 12, 2011, in Pottawattamie County. The court, after reviewing the record and being duly advised of the premises, finds the following:

I. BACKGROUND FACTS AND PROCEEDINGS

This case concerns a dispute over a property tax assessment. Kohl's Department Stores, Inc., ("Kohl's") owns commercial property located at 3626 Metro Drive, Council Bluffs, Iowa. On January 1, 2008, the Pottawattamie County Assessor gave this commercial property an assessed value of \$9,000,000. Out of the total \$9,000,000 assessed value, \$2,000,000 was

allocated to land value and \$7,000,000 was allocated to improvement value. Improvements made in 2007 were a 69,626 square foot department store, 113,750 square foot of asphalt paving, 9,800 square foot of concrete paving, and yard lighting on 5.83 acres.

On Petition to the Pottawattamie County Board of Review ("Board of Review"), Kohl's protested the assessment on three grounds: (1) the assessment was not equitable with comparable properties; (2) the assessment was for more than allowed by law; and (3) there has been a change downward in value since the last assessment. Record at 11. The Board of Review denied the protest.

On appeal to the State of Iowa Property Assessment Appeal Board ("PAAB"), Kohl's Notice of Appeal and Petition set forth two grounds on appeal: (1) inequitable assessment and (2) there is error in the assessment. Record at 1. The PAAB limited the hearing to inequitable assessment and declined to consider error in the assessment as a ground on appeal because it determined the latter ground was not asserted before the Board of Review. Although Kohl's asserted that the property was assessed at a value more than allowed by law before the Board of Review, it did not include this as a ground on appeal in its Notice of Appeal and Petition. Additionally, when the presiding officer at the PAAB hearing informed Kohl's that it was limiting its decision to whether the assessment was inequitable, Kohl's consented, responding, "okay." Record at 178, lines 9-12.

The record reveals the following evidence was offered in the proceedings below. Kohl's offered a document labeled "Uniformity Analysis" that showed the assessed value of other retail stores that it deemed comparable. No actual value of the various commercial properties was presented. The "Uniformity Analysis" disclosed that the Kohl's Department Store was constructed in 2007. Other than Hobby Lobby, which was alleged to have also been constructed

in 2007, the remaining retail stores on the list of comparables were built several years earlier. As for Hobby Lobby, Ms. Ivanelli did not know if the “Uniformity Analysis” reflected a full assessment or a partial assessment. In addition to the “Uniformity Analysis”, Kohl’s presented evidence on the purchase price of the land for and the construction costs for improvements. Adopting a cost approach, Kohl’s determined that the assessed value should be \$3,481,300. Ms. Ivanelli testified that the cost of construction and purchase price was the best way to value the property; however, she recognized not all costs were included in her calculations.

The PAAB rendered a decision, affirming the Board of Review. The PAAB determined that the only issue before it was whether the property was inequitably assessed. After evaluating the evidence, the PAAB concluded that Kohl’s had failed to satisfy its burden of proof. In reaching this decision, the PAAB recognized the comparables lacked similar sale dates and some of Ms. Ivanelli’s testimony was unreliable. Accordingly, the PAAB found there was insufficient evidence to establish an inequitable assessment.

II. ISSUES

At the outset, the court wants to make clear the issues before it. Kohl’s makes two specific assignments of error. First, Kohl’s argues that the PAAB improperly failed to make a determination on whether the property was assessed for more than the value authorized by law. Second, Kohl’s contends substantial evidence does not support the PAAB finding that Kohl’s was not inequitably assessed.

The parties dispute whether the first issue, excessive assessment, has been preserved for judicial review. While it is clear that Kohl’s raised this issue before the Board of Review, it did not raise it before the PAAB.

Iowa Administrative Code rule 701-71-71.21(9) requires the following items to be

included on the notice of appeal:

- a. The appellant's name and mailing address;
- b. A copy of the petition to the local board of review;
- c. Copies of all evidence submitted to the local board of review in support of the petition to the local board of review;
- d. A copy of the postmarked envelope and a copy of the letter of disposition by the local board of review;
- e. A short and plain statement of the claim showing that the appellant is entitled to relief;
- f. The relief sought; and
- g. The signature of the appealing party or the party's legal representative.

The actual Notice of Appeal and Petition form that the PAAB provides for appellants contains a section labeled “Grounds on Appeal”. *See* Record at 1. In this section, the form provides checkboxes in which the appellant can check the grounds the PAAB should consider on appeal. *Id.* Providing guidance to the appellant, the form states, “These grounds must be the same grounds that were protested to the local board of review. Check all grounds that apply.” *Id.* Kohl’s argues that the form goes beyond the scope of the regulation. Additionally, Kohl’s argues that “[t]he PAAB, in its Order, has concluded....the Petitioner’s error in checking the correct boxes on the form precluded the PAAB from considering the appeal grounds.” *See* Petitioner’s Appeal Brief at 4.

A court reviews administrative actions only after a party has pursued all available remedies at the administrative level. *Portz v. Iowa Bd. of Medical Examiners*, 563 N.W.2d 592, 593 (Iowa 1997). An administrative matter is not appropriate for judicial review “until the point has been fully pursued and lost before the agency.” *Id.* This rule, known as the exhaustion requirement, “seeks to insure an intra-agency review so that the agency will have a chance to

correct its own errors.” *Id.*

Here, the court finds it necessary to highlight the actual ruling of the PAAB. In its Order, the PAAB declined to address the new ground, error in the assessment, Kohl’s raised on appeal. *See* Record at 155; PAAB Order at 2. Iowa Code section 441.37A(1) does not allow the PAAB to consider new matters, and required the PAAB to reach this conclusion. Contrary to Kohl’s argument, the PAAB did not conclude, much less intimate, that because Petitioner checked the wrong box, the PAAB was precluded from considering whether Kohl’s was assessed more than allowed by law. Kohl’s simply never raised this issue on the Notice of Appeal, at the hearing, or in a motion for rehearing or reconsideration. Because Kohl’s never indicated to the PAAB at any time that the PAAB failed to consider whether Kohl’s was assessed more than allowed by law, Kohl’s has not satisfied the exhaustion requirement. Accordingly, the issue is not appropriately preserved for this court’s review.

Aside from the two specific claims of error, Kohl’s contends that the PAAB’s decision must be reversed on the following grounds:

- (a) an erroneous interpretation of a provision of law;
- (b) improper procedure or decision making process;
- (c) lack of substantial evidentiary support;
- (d) product of illogical reasoning;
- (e) product of decision making process which failed to consider relevant and important matters;
- (f) product of decision making process which improperly applied law to fact
- (g) irrational and otherwise unreasonable, arbitrary, capricious and abuse of discretion.

See Petition at 2, ¶ 4; Petitioner’s Brief at 1. These claims of error are taken directly from the various provisions in section 17A.19. The Iowa Supreme Court has noted that these provisions in section 17A.19 “enumerate *general* reasons that provide basis for the district court to take corrective action on judicial review.” *Garwick v. Iowa Dep’t of Transp., Motor Vehicle Div.*, 611 N.W.2d 286, 288 (Iowa 2000) (emphasis in original). Merely listing these general reasons,

without more substance, is “far too unspecific to preserve” error. *See id.* Because Kohl’s has failed to cite authority or provide any substantive argument in regard to each of the general provisions it listed from section 17A.19, the court need not consider them. *Soo Line R. Co. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 689 (1994). Therefore, the court’s review is limited to the issue of inequitable assessment.

II. STANDARD AND SCOPE OF REVIEW

Iowa Code chapter 17A and section 441.38 guide the court’s review of the PAAB’s decision. Iowa Code § 441.38B. Because this action comes up from a decision of the PAAB, the court’s review is for correction of errors at law. *See* Iowa Code § 441.39.

The precise claim of error determines the extent of review. *See Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). “If the claim of error lies with the agency’s findings of fact, the proper question on review is whether substantial evidence supports those findings of fact.” *Id.* at 218. We are bound by the agency’s findings if supported by substantial evidence in the record as a whole. *Id.* For reviewing purposes, evidence is substantial if a reasonable person would deem the evidence sufficient to establish a fact at issue in light of the serious consequences resulting from established facts. Iowa Code § 17A.19(1)(f)(1). A court does not consider whether the evidence supports a different finding, but whether the evidence supports the findings actually made. *Meyer*, 710 N.W.2d at 218.

III. RULING OF THE COURT

A party challenging a property tax valuation must do so in two stages. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 598 (Iowa 1990). First, the challenging party must show the board’s valuation is excessive, inadequate, inequitable, or capricious. *Id.* (citations omitted). Second, the challenging party must show what the proper

valuation should be. *Id.*

During the first stage, the challenging party has the burden to establish the grounds upon which the protest is based. *See* Iowa Code § 441.21(3). The requisite burden is a preponderance of the evidence. *See Compiano v. Polk County Bd. of Review*, 771 N.W.2d 392, 396 (Iowa 2009). However, if the challenging party offers competent evidence through at least two disinterested witnesses that the market value of the property is lower than assessed market value, the burden shifts to the party seeking to uphold the assessed value. *Id.* “[F]ailing to shift the burden of proof is not equivalent to failing to satisfy the burden of proof.” *Ross v. Board of Review of City of Iowa City*, 417 N.W.2d 462, 465 (Iowa 1988). In the end, an evaluation of all the evidence presented will determine if the party having the burden has satisfied it. *See Compiano*, 771 N.W.2d at 397.

In the first stage, Kohl’s claimed the valuation was inequitable. “The gist of this ground is that the property at issue is assessed higher proportionately than similar property in the area.” *Riso v. Pottawattamie Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). To prove an inequitable assessment, the challenging party must show:

(1) that there are several other properties within the assessment district similar and comparable to the one at issue, (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the property at issue, (5) the assessment complained of, and (6) that by a comparison the property at issue is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating a discrimination

Id. In the present case, relying on these elements of proof, the PAAB found that Kohl’s was not inequitably assessed. Specifically, the PAAB opined, “While there was some evidence presented that suggests the Kohl’s assessment is higher than those of like properties in the jurisdiction, we find the evidence insufficient to show inequity in the January 1, 2008, assessment. Record at

158; PAAB Order at 5.

On judicial review, the limited question is whether substantial evidence supports the PAAB's finding. Kohl's appears to argue that because it offered the only evidence as to any of the elements of proof, substantial evidence does not support the PAAB's finding. The court disagrees.

Iowa Code section 17A.19(f)(1) defines "substantial evidence" as that "quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue." Evidence is not substantial if "a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency." *Sahu v. Iowa Bd. of Medical Examiners*, 537 N.W.2d 674, 677 (Iowa 1995) (citation and internal quotation omitted). Although inconsistent conclusions may be drawn from the evidence, this does not mean the agency's conclusion is unsupported by substantial evidence. *On With Life, Inc. v. State Health Facilities Council*, 532 N.W.2d 496, 497 (Iowa Ct. App. 1995). Ultimately, the question is not whether the evidence supports a different finding but whether the evidence supports the agency's finding. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996).

After reviewing the record, the court concludes substantial evidence supports the PAAB's finding of insufficient evidence to establish inequitable assessment. Although Kohl's was the only party to offer evidence, the PAAB determined some of the evidence presented actually cut against its case. The record supports this determination, as most of the properties that Kohl's presented as comparables were markedly different from Kohl's in several respects. *See Riso*, 362 N.W.2d at 517 (challenging party must show "there are several other properties within the assessment district similar and comparable to the one at issue."). And, when questioned, Ms.

Ivanalli was unable to confirm if Hobby Lobby's assessment was full or partial. Moreover, there is no evidence in the record of the actual value of comparable properties. *Id.* (challenging party must show "the actual value of the comparable properties."). Finally, Kohl's did not present any evidence showing that the assessor used a different method to assess its property as compared to other properties. *See Eagle Food Centers, Inc. v. Board of Review of City of Davenport, Scott County*, 497 N.W.2d 860, 865 (Iowa 1993) (determining assessment was inequitable "when the income approach is not uniformly applied to comparable properties."). Therefore, even if another inference is possible, substantial evidence supports PAAB's finding that Kohl's was not inequitably assessed.

IT IS THEREFORE ORDERED that Respondent's decision is hereby AFFIRMED.

Dated: July 22, 2011.

/s/KATHLEEN KILOSKI, JUDGE
IOWA FOURTH JUDICIAL DISTRICT